Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems	)	PR Docket No. 92-79

To: The Commission

REPLY COMMENTS
OF
THE NATIONAL ASSOCIATION OF
BUSINESS AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Reply Comments in response to the Comments filed in the above-referenced proceeding.

I. REPLY COMMENTS

NABER shares the concern expressed by Idaho Communications Limited Partnership and Ram Mobile Data USA Limited Partnership regarding SMR licensee responsibility for end user compliance with certain FCC, FAA and NEPA rules over which the SMR licensee has no control. Therefore, NABER suggests that the Commission clarify that the SMR licensee will only be responsible for end user compliance with rules over which the SMR licensee has control.

NABER does not support the penalties suggested by the American Petroleum Institute ("API") and the Special Industrial Radio Service Association/Council of Independent Communication Suppliers ("SIRSA/CICS") for certain application dismissals and withdrawals.

API suggests at page 8 of its Comments that the Commission apply Section 90.631(b) of its rules (prohibiting channels from being added to a system for six (6) months) "... when a prior application is either dismissed or withdrawn because the SMR operator was unable to provide sufficient substantiation for its loading data or the loading data is found to be fraudulent." SIRSA/CICS suggests similar provisions.[1] While NABER believes that the Commission should impose sanctions where licenseeS have deliberately misrepresented facts to the Commission, NABER is concerned that the six (6) month moratorium may be applied in inappropriate circumstances.

For example, an SMR licensee may need to dismiss its application because a large user may have recently left the system, dropping the system's loading below necessary levels. Another SMR licensee may mistakenly interpret the Commission's rules as to when an application may be filed or when the system qualifies for additional channels. In a third case the SMR licensee may reasonably believe that it has supplied the Commission with sufficient information to substantiate the loading, but the Commission dismisses the application because the information is not presented in the proper form.[2] In each case, the SMR licensee may suffer the six month penalty or engage in a costly and protracted

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[1]SIRSA/CICS Comments at 7.

[2]For example, of the initial 21 Finder's Preference applications which were filed between January 21, 1992 and March 25, 1992, approximately 15 were dismissed because of the form, not the merits, of the applications.

proceeding to demonstrate that the penalty should not apply. NABER believes that the Commission's existing authority is sufficient to apply to fraudulent loading cases and that no additional penalty section is warranted.

Finally, common carrier and state regulatory interests in their Comments once again use their often repeated, anti-competitive phrase "blurring the distinction" from every Commission proceeding where the private radio industry has sought to operate more efficiently and effectively.[3] In each case, the Commentors do not discuss the merits of eliminating end user licensing, rather the "Fleet Call proceeding" is reargued. In addition, NARUC, McCaw and the Cellular Telecommunications Industry Association ("CTIA") ask for a more comprehensive proceeding looking at private carrier versus common carrier regulation, which is beyond the scope of this proceeding.

However, the fact remains that end user licensing has nothing to do with a private system's compliance with Section 332 of the Communications Act. Two-way Private Carriers below 800 MHz and Private Carrier Paging systems are not required to license end users, and there is no justification for a regulatory difference for SMR Systems, unless licensing information is crucial to the process of ensuring that spectrum is actually utilized. The

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[3]See, for example, Comments of McCaw Cellular Communications, Inc. at 3 ("McCaw"); GTE Mobilnet Incorporated and Contel Cellular Inc. at 3 ("GTE"); People of the State of California and the Public Utilities Commission of the State of California at 3 ("California PUC"); National Association of Regulatory Utility Commissioners at 5 ("NARUC").

Commission's proposal in this proceeding, with the changes suggested by NABER, sufficiently accounts for spectrum utilization, negating the need for separate licensing. Therefore, NABER supports its elimination.

II. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

NATIONAL ASSOCIATION FOR BUSINESS AND EDUCATIONAL RADIO, INC.

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Date: July 6, 1992